

IN THE COURT OF Ld. JUDICIAL MAGISTRATE, TEHATTA, NADIA

Present: Bedashruti Mallik, WBSJ

Misc Crl Case No. 56 of 2024

Interim Matter u/s 23 of the PWDV Act, 2005

Order Dated:21.11.2024

Today is fixed for filing show cause by the OP.

The parties file hazira.

OP files his show cause along with his affidavit of assets and liabilities.

Petitioner files some documents by way of *firisti*. Let it be kept with the record.

Interim hearing is done.

Now the record is taken up for passing interim order in respect of the application for interim maintenance dated 24.05.2024 filed by the petitioner, namely, Basana Biswas, u/s 23 of the Protection of Women from Domestic Violence Act of 2005. The petitioner by filing this interim maintenance petition has claimed maintenance for herself and her minor daughter.

The case of the petitioner in brief is that she is the legally married wife of the respondent no. 1, namely, Amit Biswas. The marriage between petitioner and the respondent no was solemnised 4 years prior to the filing of the instant case according to Hindu rites and customs, as a result of a love affair . At the time of marriage, the father of the petitioner gave cash of Rs. 1,00,000/-, various gold ornaments, furniture and other valuable articles. Thereafter the petitioner went to her matrimonial house and after entrusting all her *Stridhan* articles with the respondents, she started living her conjugal life. One daughter was also born out of the said wedlock namely Aishi Biswas, aged 3 years at the time of filing. Since the birth of her daughter, the respondents inflicted both mental and physical torture upon the petitioner for more dowry demands. They refused her adequate food and clothing. Respondent no. 1 often abused her physically on the instigation of the other respondents. Finally on 26.11.2023 at about 05:00 PM, the respondents locked the petitioner and her daughter in a room, and tried to strangle her. She was rescued by the local people, who also took her to her matrimonial house. The petitioner also filed one criminal case against the respondents before Tehatta PS. Since then the petitioner is living at her paternal house with great hardships. The respondent no. 1 has not taken any information nor paid any maintenance towards the petitioner or her daughter.

The petitioner has no independent source of income. On the contrary, the respondent is an able bodied person, owns a pucca house, has 12-14bighas of landed properties, works as a labour contractor, and also has money lending business. He earns a monthly income of Rs. 40,000/-. Petitioner also submits that the respondent no.1 is wilfully neglecting to maintain his wife and child. She has prayed for interim relief as per her main petition for herself and her daughter from respondent no. 1.

The respondents made their appearance and objected to the contentions of the petitioner by filing their show cause, wherein, the respondent, inter alia, denied and disputed all the allegations raised by the petitioner against them. The respondents contend that the petitioner is a desperate and quarrelsome lady. Since her marriage she was unable to adjust herself in the joint family of her

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husband. She frequented her paternal house without paying heed to anyone else. On being confronted she hurled abuses at the respondents. When she conceived, she aborted her pregnancy as per the instructions of her mother, despite protest from the respondents. However, as a result of the abortion, the petitioner fell sick, and respondent no. 1 took her to the doctor for her treatment. She also pressurised her husband to provide her a separate mess. Later the petitioner again conceived. On 21.12.2022, the petitioner willingly left her matrimonial house without informing anybody. Later when her husband went to fetch her back, she refused to come. Later when the daughter of the petitioner was born, the respondents went to see her, but her family members assaulted the respondents. As a result, the respondents sustained injuries and respondent no. 2 was admitted at Tehatta hospital for his treatment. When the respondents tried to file a criminal case over the said incident, the family members of the petitioner requested them to settle the disputes through mitigation. However, the petitioner and her family members never attended to any of the local meetings arranged to mitigate the disputes. Finally the petitioner stated in one Salish meeting that she is not willing to live with her husband. On the contrary the respondent no. 1 is still willing to restore his conjugal life.

Further the respondent no. 1 states that he is a day labour and earns Rs. 200-250/- per day. On the contrary, the petitioner earns Rs. 12-15,000/- per month by working as a seamstress. In the above premises, the respondents prayed for dismissal of the matter.

It appears from the record that the report of the protection officer has not yet come.

This is an interim stage and while adjudicating interim matters it is the general prudence that the Court has to strike a balance between the contentions of the contesting parties as no such cogent evidence remains in the hands of the Court. Although it is fact that both the sides, in this case, have submitted copies of some documents, but the imputations raised by the respective parties can only be determined after having substantive and corroborative evidence in hand.

The mere statement of the petitioner that she is unable to maintain herself is sufficient for getting a maintenance order under section 125 Cr.P.C, which is in consonance with the PWDV Act and it would be for the husband to prove otherwise. But, in the instant case, the husband has not brought anything to prove that he was not negligent in providing maintenance towards his wife. It is a solitary principle of law that every husband is bound to maintain his wife and children. Further, driving out of the applicant/petitioner from the house of the O.P./respondent is itself domestic violence upon the petitioner. So, considering the above stated facts and circumstances, I am inclined to hold that this is a fit case for allowing monthly maintenance only towards the petitioner for monetary relief in form of interim maintenance only.

Therefore, the applicant/petitioner is entitled to get a monthly maintenance of Rs. 2,000/- per month only for herself and Rs. 1,000/- for her minor child. This court is also inclined to hold that this amount is sufficient for her maintenance as per her status, situation and social condition.

The other prayers of the petitioner do not seem to be of urgent nature and hence they are refused at this stage.

Hence, it is

ORDERED

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that the instant interim petition is allowed on contest in part.

Henceforth the petitioner does get an interim order U/S 23 towards monthly maintenance allowance to the tune of **Rs.3000/-(Three thousand) per month** for herself and her minor child from the O.P./respondent, from the date of filing of this case, i.e. 24.05.2024, payable by the O.P./respondent, within the every 15th day of every succeeding English calendar month, failing which the petitioner would be at liberty to execute the order so passed.

Let the copy of this order be handed over to the petitioner free of cost.

To for DIR and evidence.

D/C by me,
Sd/- B. Mallik
Judicial Magistrate,
Tehatta, Nadia

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Judicial Magistrate,
Tehatta, Nadia